

WILBURN H. SEALS

IBLA 82-720

Decided March 22, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. NM-A 42487 (TX).

Set aside and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases:
Applications: Filing -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3 (b)(2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

APPEARANCES: Steven C. Metzger, Esq., Dallas, Texas, for appellant; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Wilburn H. Seals has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 17, 1982, rejecting his noncompetitive oil and gas lease offer, NM-A 42487 (TX).

On September 24, 1980, appellant filed a noncompetitive oil and gas lease offer for 50.011 acres of land situated in Fannin County, Texas, pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976). The land applied for was described by metes and bounds on an attached document. 1/ The land was also identified by acquisition tract number TX-29-38"

1/ On Oct. 7, 1980, appellant filed an amended lease offer in order to correct certain errors, not relevant herein, in the original offer.

as land which had been deeded to the United States by L. J. and Mary C. Cullen on June 26, 1940. In its March 1982 decision, BLM rejected appellant's application because it was not accompanied by a map indicating the location of the desired land, as required by 43 CFR 3101.2-3(b)(2).

[1] The applicable regulation, 43 CFR 3101.2-3, governs the description of lands in noncompetitive oil and gas lease offers for acquired lands. 43 CFR 3101.2-3(a) applies to "[s]urveyed lands," *i.e.*, lands which have been surveyed under the rectangular system of public land surveys or are within the area of public land surveys. On the other hand, 43 CFR 3101.2-3(b) applies to "[l]ands not surveyed under the rectangular survey system," *i.e.*, lands which have not been surveyed under the rectangular survey system of public land surveys or are not within the area of public land surveys. 43 CFR 3101.2-3(b)(2) further provides that "[e]ach offer * * * must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part * * *."

In his statement of reasons for appeal, appellant contends that he complied with 43 CFR 3101.2-3(a) in describing the land in his lease offer and that this obviates the need for compliance with 43 CFR 3101.2-3(b)(2). Appellant refers to language in 43 CFR 3101.2-3(a) that if land is within the area of the public land surveys "the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances." [Emphasis added.] Appellant asserts that the desired land can be connected with a reasonably near corner of the "John Nail Survey, Abstract No. 842."

Appellant is mistaken in his reliance on 43 CFR 3101.2-3(a). Land within the State of Texas has not been surveyed under the rectangular system of public land surveys. Accordingly, the land involved herein cannot be considered to be within an area of the public land surveys. A description of such land in a noncompetitive oil and gas lease offer must conform to 43 CFR 3101.2-3(b). Chalfant, Magee & Hansen, Inc., 13 IBLA 252 (1973).

Appellant argues that he has provided a description of the land sufficient to identify it for oil and gas leasing purposes and that the fundamental aim of 43 CFR 3101.2-3 is satisfied. The record indicates that BLM had no apparent trouble identifying the location of the desired land. An oil and gas plat (11 of 12) for Fannin County, Texas, indicates the location of the land. Nevertheless, 43 CFR 3101.2-3(b)(2) clearly requires that an offeror for unsurveyed acquired land not within an area of the public land surveys must submit a map showing the location of the desired land with his oil and gas lease offer. Failure to do so properly results in rejection of the lease offer. Chalfant, Magee & Hansen, Inc., *supra*.

In the alternative, appellant argues that he was not adequately informed of the map requirement. Appellant cannot take advantage of his ignorance. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

On April 9, 1982, along with his notice of appeal and statement of reasons, appellant filed with BLM a map showing the location of the desired land. Appellant requests that his oil and gas lease offer "as amended by any subsequent filings" be approved. In its response, the Office of the Field Solicitor, on behalf of BLM, notes that, in accordance with the Board's decision in Curtis Wheeler, 55 IBLA 65 (1981), the matter should be remanded to BLM for a determination as to the adequacy of the map and "if it is satisfactory, reinstatement of the lease offer" with priority as of April 9, 1982. We agree in part. An over-the-counter (as opposed to a simultaneously filed) noncompetitive oil and gas lease offer which is subject to rejection for failure to comply with a Departmental regulation may earn priority as of the time of compliance. Sumatra Energy Corp., 68 IBLA 313 (1982); Curtis Wheeler, supra. The map submitted on appeal is held to comply with the requirement of 43 CFR 3101.2-3(b)(2). Accordingly, appellant's lease offer will be reinstated and allowed to earn priority as of April 9, 1982.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

